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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,248	11/07/2001	Joseph DeSouza	32086US1	6160

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EXAMINER

MELWANI, DINESH

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,248

Applicant(s)

DESOUZA, JOSEPH

Examiner

Dinesh N Melwani

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,12-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,4-10,12,13,18-20 and 22 is/are rejected.
- 7) ☐ Claim(s) 14-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement is made of applicant's submission of:

Amendment A filed on 6/13/03

Extension of Time (1 Mo.) filed on 6/13/03

The aforementioned items have been noted and officially inserted into the application.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 12-13, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Robins (U.S. Patent No. 4,305,611). Robins discloses an adjustable gate hinge and latch system for a fence gate of a fence, the system including: a hinge to interconnect the gate to a first post of the fence, the hinge supporting the gate and permitting pivoting movement of the gate relative to the first fence post, see col. 1, line 22; and a latch unit to secure the gate, to a second post of the fence, in a closed position of the gate, said first and second posts defining a generally vertical plane of said fence; wherein the latch unit has an arrangement to permit adjustment of the gate relative to the fence in a direction perpendicular to the plane of the fence when said gate is in a closed position, and the arrangement includes two components, the first being housing (61) and

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the second being comprised of bar (15) and plate (51), that are relatively slidable along the direction perpendicular to the plane of the fence and that are secured to each other subsequent to the movement along the direction perpendicular to the plane of the fence. For the purposes of clarification, the Examiner is asserting that Robins "arrangement" includes screws (55, 63) that allow each component to move perpendicular to the plane of the fence. Furthermore, figure 1 shows said components being secured to each other after relative movement. In regards to claim 12, Robins' first component is fixedly attached to the gate, and the second component (15 and 51) is movable along the first component along the first component along the direction perpendicular to the plane of the fence and is secured to the first component. Regarding claim 13, the first component includes a gate handle (27) and the second component includes a latch pin (15). In regards to claim 20, Robins' latch unit includes a latch pin (15) mounted to move with the gate, a latch mounting bracket (61) attached to the second post on a first side of the fence, and a catch member (generally 31) pivotally mounted relative to the latch mounting bracket, the catch member includes a center portion (33) to engage and retain the latch pin when the gate is in the closed position, and upper portion (27) actuatable to operate the catch member, and a lower portion (31) actuatable to operate the catch member, and wherein the latch mounting bracket and the catch member can be inverted to be used on either of the posts associated with the gate.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robins (U.S. Patent No. 4,305,611) in view of Rupprechter (U.S. Patent No. 6,442,798). Robins discloses an adjustable gate hinge and latch system for a fence gate of a fence, the system including a hinge (see col. 1, line 22) to interconnect the gate to a first post of the fence, the hinge supporting the gate and permitting pivoting movement of the gate relative to the first fence post; a latch unit to secure the gate, to a second post of the fence, in a closed position of the gate, said first and second posts defining a generally vertical plane of said fence. Robins system is silent to the type of hinge being utilized and does not disclose that said hinge unit has an arrangement to permit adjustment of the gate relative to the fence. Rupprechter discloses a hinge unit that has an arrangement to permit adjustment of the gate relative to the fence in a direction perpendicular to the plane of the fence when said gate is in a closed position (figs. 4-5), and the arrangement includes two components (3,4) that are relatively slidable along the direction perpendicular to the plane of the fence and that are secured to each other subsequent to the movement along the direction perpendicular to the plane of the fence and the first component (3) is fixedly attached to the first post, and the second component (4) is movable along the first component along the direction perpendicular to the plane of the fence and is secured to the first component and one of the two components has an elongate slot (5) extending in the direction perpendicular to the plane

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of the fence and the other of the two components has an opening (18), a fastener (6) extends through the slot and the opening, and the fastener is loosened to permit the relative movement of the components and is tightened to secure the components to each other and wherein the first component has a portion (14) engaged with the first post and a portion (15) spaced from the first post, and the second component has a portion (generally 4) located adjacent to the first post and between the first post and the spaced-away portion of the first component. In regards to claim 5, Rupprechter's hinge unit has a first component that has a slot (20) between the engaged portion (14) and the spaced away portion (15), and the second component has a portion (13) extending from the portion adjacent to the first post through the slot between the engaged portion and the spaced-away portion of the first component toward a pivot connection of the hinge, see Fig. 1. As it concerns claim 6, the portion (4) of the second component located adjacent to the first post is pressed between the post and the spaced-away portion of the first component when the fastener (6) is tightened. Regarding claim 7, the second component has a portion for accepting a hinge pin (10). In regards to claims 8 and 9, Rupprechter's hinge unit includes a third component (8) pivotally connected to the second component via the hinge pin, the third component having a structure (i.e., elongated fastener openings) for connection of the third component to the gate. Regarding claim 10, Rupprechter's hinge unit may be removed and inverted in a manner that the unit can be used on either of the two posts associated with the gate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Rupprechter, in regards to an adjustable hinge, to facilitate alignment of the adjustable latch and the corresponding fence post.

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5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robins (U.S. Patent No. 4,305,611) in view of Nichandros (U.S. Patent No. 5,116,090). Robins discloses a latch unit substantially as claimed and as set forth in paragraph 2 of this Office Action. Robins fails to disclose that said latch unit further includes a release member extending from the second side of the fence. Nichandros discloses a release member (30) extending from a second side of the fence to the lower portion of the catch member (via latch (18)), with the release member being manually actuatable from the second fence side to actuate the lower portion of the catch member and operate the catch member. In regards to claim 19, Nichandros' release member is connected to the lower portion of the catch member (via latch (18)) by a fastener (28) that transmits a push force from the release member to the lower portion of the catch member and which permits relative movement between the release member and the catch member. It would have been obvious to one having ordinary skill at the time the invention was made to utilize the teachings of Nichandros, in regards to a release lever allowing release of the catch member from a second side of a fence, to modify Robins in order to simplify opening of said gate.

Allowable Subject Matter

6. Claims 14-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. The following is a statement of reasons for the indication of allowable subject matter:
Claims 14-17 would be allowable as set forth in the previous Office Action (Paper No. 5).

Response to Arguments

8. Applicant's arguments filed 6/13/03 have been fully considered but they are not persuasive.
9. Applicant's arguments with respect to claims 1, 4-10, 12-13, 18-20, and 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinesh N Melwani whose telephone number is 703-305-4546.

The examiner can normally be reached on M-F, 8:30-6 except every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4115.

DNM


ROBERT J. SANDY
PRIMARY EXAMINER